

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CINDY PRESS, as Special Administrator of the)
Estate of Ying Deng,)
)
Cross-Claimant,)
)
v.)
)
JASON CAI,)
)
Cross-Defendant)
_____)

Case No.: 09-CV-00396-LHK
PRETRIAL CONFERENCE ORDER

Clerk: Stacy Sakamoto
Reporter: Lee-Anne Shortridge

Cross-Defendant's Attorney: Paul Bick
Nguyen, Julie Pulliam
Cross-Claimant's Attorney: Ryan Ramseyer

A pretrial conference was held on September 11, 2014. A further status conference is set for September 18, 2014 at 2 p.m.

At the pretrial conference, the Court made the following rulings on the record:

- For the reasons stated on the record, and balancing the appropriate factors under Federal Rule of Evidence 403, Cross-claimant's motions in limine, ECF No. 128–29, 148–49, were GRANTED IN PART and DENIED IN PART. Specifically:
 - Cross-claimant's motion in limine # 1 to admit the former trial testimony of Danny Aulman is GRANTED.
 - Cross-claimant's motion in limine # 2 to exclude witnesses and exhibits disclosed by Cross-defendant after February 28, 2014 is GRANTED IN PART AND DENIED IN PART.
 - Cross-claimant withdrew its objection to Detective Randy Bynum. Cross-defendant withdrew Bao Cai and Alan Shatz. The Court GRANTS the motion to exclude the following witnesses: Officer

Zuniga, Anthony Chang, and Alan Shieh. The Court DENIES the motion to exclude the following live witnesses: Dr. Michael Laufer, Dr. Gregory Schmunk, Mia Liu, Lau Kai-Hung, Grace Shum, Elizabeth Cai, Shu Hui O-Kuo, Sgt. Larry Imas, Michelle Huang, and Jason Cai.

- Cross-claimant's motion in limine # 3 to exclude certain exhibits as hearsay was GRANTED IN PART. The Court GRANTS Cross-claimant's objections to the new exhibits Cross-defendant filed on September 9, 2014 and September 10, 2014. The Court reserved ruling on two exhibits. Specifically, the Court ruled as follows:
 - The Court GRANTS the motion to exclude the following exhibits: University of Dundee Forensic Medicine "Bodies Recovered from Water" article, The Recorder "Second Trial in Pool Death" article, Investigation report made in China by criminal defense team, Dr. Gregory Schmunk's former testimony, Dr. Gregory Schmunk's declaration, Dr. Brent Turvey's former testimony, Mia Liu's former testimony, Michelle Huang's former testimony, Alan Shatz's former testimony, Taped interview transcript of Mia Liu, Taped interview transcript of Grace Shum, Declaration of Elizabeth Cai, Police report interview of Shu Hui O-Kuo, Declaration of Grace Shum, Declaration of Lau Kai-Hung, and Pool photos taken by Dr. Laufer.
 - The Court reserves ruling on the former trial testimony of Grace Shum, to allow Cross-defendant's counsel an opportunity to obtain a signed declaration establishing unavailability. Any such declaration shall be filed by September 12, 2014.
 - The Court reserves ruling on Dr. Gregory Schmunk's coroner's report until September 16, 2014, to allow counsel to meet and confer and submit a joint statement regarding the coroner's report. The parties shall submit a joint statement regarding the coroner's report, including any proposed redactions, by September 16, 2014. Cross-claimant shall file a full and complete copy of the coroner's report by September 12, 2014.
- For the reasons stated on the record, and balancing the appropriate factors under Federal Rule of Evidence 403, Cross-defendant's motions in limine, ECF No. 154–58, were GRANTED IN PART and DENIED IN PART. Specifically:
 - Cross-defendant's motion in limine # 1 to exclude photos # 37; 123; 173; 174; 175; 176; 177; 178; 179; 180; 181; 182; 153; 184; 185 and 186 from Cross-claimant's Exhibit 7 is GRANTED.
 - Cross-defendant's motion in limine # 2 to exclude Cross-claimant's Exhibit 21, the note threatening Santa Clara County Attorney William Pierce, is GRANTED.

- The Court reserves ruling on Cross-defendant's motion in limine # 3 to exclude Cross-claimant's Exhibits 22, 23, & 24, the information, complaint, and abstract of judgment in *People v. Cai*, CC801427. Cross-defendant shall file these exhibits with the Court by September 12, 2014. The parties shall meet and confer and file either a stipulation regarding these exhibits or a statement of proposed redaction for all three documents by September 16, 2014. Cross-defendant shall file any proposed limiting instruction with supporting authority by September 16, 2014.
- Cross-defendant's motion in limine # 4 to admit Dr. Gregory Schmunk's former testimony, Dr. Brent Turvey's former testimony, Mia Liu's former testimony, Alan Schatz's former testimony, and Michelle Huang's former testimony is DENIED. Cross-defendant withdrew his motion in limine # 4 as to Dr. Michael Laufer's former testimony.
- Cross-defendant's motion in limine # 5 to dismiss for lack of subject-matter jurisdiction is DENIED.
- The Court reserves ruling on Cross-defendant's motion in limine # 6 to admit Dr. Gregory Schmunk's coroner's report until September 16, 2014, to allow counsel to meet and confer and submit a joint statement regarding the coroner's report as set forth above.

The Court further made the additional rulings:

Ms. Pulliam shall file a signed copy of the joint pretrial statement by September 12, 2014.

The Court will file proposed preliminary jury instructions on September 12, 2014. The parties shall file any objections by September 17, 2014.

The parties shall file any stipulation regarding the testimony of the Custodian of Records for State Farm Life Insurance Company by September 17, 2014.

The parties shall file a joint status conference statement by September 17, 2014 by 3 p.m. advising whether the further status conference set for September 18, 2014 is necessary or should be vacated. If the parties require a further status conference, they shall identify the issues to be resolved in their joint statement.

The parties shall file their proposed final jury instructions with supporting authority by September 30, 2014. This deadline may be advanced if trial progresses more quickly than currently scheduled.

The parties shall have 4 peremptory strikes per side.


The parties shall file a rolling list of anticipated witnesses by 5 p.m. the day before the witnesses are expected to testify.

The parties are reminded that they must submit three sets of all pre-marked exhibits in three ring binders to Stacy Sakamoto, Courtroom Deputy to Judge Koh at least 7 days prior to the commencement of trial on September 22, 2014. Please refer to Judge Koh's pretrial standing order for jury trials for further information.

IT IS SO ORDERED.

United States District Court
For the Northern District of California

Dated: September 12, 2014



LUCY H. KOH
United States District Judge